

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

**PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK**

**CRR No. 113 of 2024
Mahasen Sk.
versus
The State of West Bengal**

For the Petitioner	: Mr. Arindam Jana, Advocate Md. Sabbir Biswas, Advocate Ms. Somdutta Patra, Advocate Ms. Suparna Roy, Advocate
For the State	: Mr. Aditi Shankar Chakraborty, Ld. APP Mr. Arjun Chowdhury, Advocate
Heard on	: 20.06.2024
Judgment on	: 12.09.2024

Bivas Pattanayak, J. :-

1. This is an application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') challenging Order No. 32 dated 19th February, 2024 passed by the Additional Sessions Judge, Special NDPS 1st Court, Jalpaiguri in NDPS Case No. 66 of 2022 (arising out of New Jalpaiguri Police Station Case No. 538 of 2022 dated 23rd May, 2022) under Sections 21(C), 22(C), 25, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'NDPS Act') rejecting the prayer of the petitioner for return and/or release of the seized vehicle and cash in connection with the case.

2. The brief fact of the case, in nutshell, is that on receipt of specific information on 23rd May, 2022 at about 12:45 hours that two persons were coming in a 12 wheeler truck bearing registration no. WB 25E 8677 with huge quantity of Yaba Tablets and they will reach Jotiakhali area under New Jalpaiguri Police Station shortly, the said information was reduced in writing and intimated to Dy. S.P., Special Task Force, West Bengal, HQ at Jalpaiguri who informed the same to the superior authority. After obtaining necessary order, the complainant along with a team of Special Task Force, West Bengal reached the place of occurrence where the aforesaid truck along with the driver and one other person was apprehended. The truck bearing registration no. WB 25E 8677 along with papers and the contrabands as well as other articles were seized by the police authorities. The petitioner and one other were arrested by the police authorities. By order dated 28th August, 2023 passed in CRM (NDPS) No. 611 of 2023, the petitioner was enlarged on bail. Upon conclusion of investigation, charge sheet has been submitted being Chare Sheet No. 1025/2022 dated 17th November, 2022 against the petitioner and one other under Sections 21(C), 22(C), 25, 28 and 29 of the NDPS Act. On 30th January, 2024, the petitioner took out an application for return of the seized articles, other valuable documents and seized cash. Such prayer of the petitioner was rejected by the learned Trial Court vide order dated 19th February, 2024. Being aggrieved by and dissatisfied with the impugned order, the petitioner has preferred the present revisional application.

3. Mr. Arindam Jana, learned advocate appearing on behalf of the petitioner submitted that the learned Trial Court rejected the prayer of the

petitioner for return of the vehicle precisely on the presumption that if the vehicle is released, the petitioner being the owner would deal with narcotics in clandestine manner. However, that cannot be a ground to reject the prayer of the petitioner for return of his vehicle. There is no restriction and/or bar under the NDPS Act to release and/or return of any vehicle seized in connection with the case pending final disposal of the criminal proceedings. In the absence of any specific bar under the NDPS Act, the Court can invoke the general provisions of Section 451 and Section 457 of the Code for return of the seized article or vehicle pending final decision of the criminal case. The only obligation on the part of the Court returning the seized vehicle to the registered owner is that the registered owner of the vehicle must produce the same before the Court on conclusion of trial so that the Court can decide whether the said vehicle is liable to be confiscated or returned to the rightful claimant. In support of his submissions, he relied on the following decisions:

- i. ***Sainaba versus State of Kerala and Another*¹**
- ii. ***Syed Basheer versus State Represented By The Sub-Inspector of Police*²**
- iii. ***Bhola Singh versus State of Bihar*³**

Relying on the decision of Hon'ble Supreme Court passed in ***Sunderbhai Ambalal Desai versus State of Gujarat*⁴**, he submitted that there is no use keeping the seized article at the police station for a long period and it

¹ 2022 SCC OnLine SC 1784

² (2022) 12 SCC 616

³ 2024 SCC OnLine Pat 855

⁴ (2002) 10 SCC 283

is open to the Courts to pass appropriate orders immediately by imposing such conditions as it deems fit for return of the said vehicle. He also indicated that the report filed by the State authorities before this Court tread on the similar line, that upon release of the vehicle, the petitioner will again indulge in transporting contraband articles. He submitted that such apprehension of the State is not acceptable since the return of the vehicle to the petitioner will be a conditional one. The Court can impose conditions to secure that such vehicle is not used for any further transportation of contrabands.

In light of his aforesaid submissions, he prayed for return of the seized vehicle along with papers.

4. On the contrary, Mr. Arjun Chowdhury, learned advocate appearing on behalf of State submitted that the petitioner was the driver of the vehicle which was apprehended by the police authorities from which contraband articles were recovered. The report submitted by the Sub-Inspector of Police, Special Task Force reveals of apprehension that if the truck is released to the petitioner (owner), he will again indulge himself in transporting or smuggling of contraband drugs and may not also produce the truck before the Trial Court as and when called for.

In view of the above, he submitted that the application should be dismissed.

5. Upon hearing learned advocates for respective parties, the only issue which has fallen for consideration is whether the vehicle seized in connection with a case under the NDPS Act can be released or returned to

the interim custody of the original owner during the pendency of the trial and confiscation proceedings.

6. It is not in dispute that the petitioner is the owner of the vehicle (truck) seized in connection with the case.

7. While dealing with the aforesaid aspect, it would be apposite to reproduce the statutory provisions of the NDPS Act as hereunder:

“Section 60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.– (1) Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any narcotic drug or psychotropic substance or controlled substances lawfully produced, imported interstate, exported interstate, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance or controlled substances which is liable to confiscation under sub-section (1) and the receptacles, packages and coverings in which any narcotic drug or psychotropic substance or controlled substances, materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance or controlled substances, or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.”

“Section 63. Procedure in making confiscations.– (1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the court shall decide whether any article or thing seized under this Act is liable to confiscation under Section 60 or Section 61 or Section 62 and, if it decides that the article is so liable, it may order confiscation accordingly.

(2) Where any article or thing seized under this Act appears to be liable to confiscation under Section 60 or Section 61 or Section 62,

but the person who committed the offence in connection therewith is not known or cannot be found, the court may inquire into and decide such liability, and may order confiscation accordingly:

Provided that no order of confiscation of an article or thing shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim:

Provided further that if any such article or thing, other than a narcotic drug, psychotropic substance controlled substance the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale.”

8. Upon conjoint reading of Sections 60 and 63 of the Act, it manifest that it is the Special Court established under NDPS Act which decides liability of any article or thing including vehicle to confiscation. Further such vehicle is liable to confiscation only when its owner fails to prove that it was so used in the commission of the offence without the knowledge and connivance of himself, his agent, if any, or the person-in-charge and each of them has taken all precautions against such use. In other words, such articles or things are liable to confiscation under Section 60 of the NDPS Act if they are found by the Special Court to be used for commission of the offence. However, as per proviso to Sub-Section 2 of Section 63, if anybody makes claim to it within one month of its seizure, the Special Court has to hear him before passing order for confiscation. Therefore, in case of any article, thing or conveyance/vehicle is claimed by any person as provided under Sections 60 and 63 of the NDPS Act, the Special Court is duty bound to decide the liability of that thing, article or vehicles to confiscation and only if it is decided by the Special Court that such article, thing or

vehicle is liable to confiscation, the disposal committee can dispose it by sale or otherwise.

9. Be that as it may, under Sections 60 and 63 of the NDPS Act, there is no provision for passing any order by the Special Court for interim release of article, thing, conveyance/vehicle during pendency of the trial or confiscation proceeding before itself. In such a situation, the question arises whether Special Court can pass any order to release of vehicle/article to interim custody of the rightful owner or not.

10. In finding an answer to the aforesaid query, Section 36C of the NDPS Act becomes relevant. As per Section 36C of NDPS Act, the provisions of the Code is made applicable if it is not inconsistent or contrary to the provisions of the NDPS Act which is a special enactment. Section 5 of the Code also provides that nothing contained in the Code shall affect any special enactments, in the absence of a specific provision to the contrary. It is relevant to note that there is no specific bar under the provisions of the NDPS Act for return of any seized vehicles used for transporting narcotic drug or psychotropic substance as an interim custody pending final disposal of the criminal case. In the absence of any specific bar under the NDPS Act, Section 451 of the Code becomes applicable to the proceedings before the Special Court established under the NDPS Act, which provides for order for custody and disposal of property pending inquiry and trial in certain cases. Thus, if an application is made before the Special Court under NDPS Act for release of vehicle or articles, the provisions under Section 451 of the Code can be invoked for release of the

vehicle or articles to the rightful owner during pendency of the trial or confiscation proceeding.

11. In ***Tridip Mitra versus The State of West Bengal***⁵, this Court held that during pendency of the trial, the learned Judge of the Special Court under the NDPS Act has jurisdiction under Sections 451 and 457 of the Code to pass necessary order in accordance with law regarding prayer for release of the seized vehicle as an interim custody.

12. In ***Ainul Haque versus The State of West Bengal & Anr.***⁶, this Court has held as follows:

“7. On perusal of the above provisions of Section 60(3) and Section 63 of the NDPS Act, I find that the seized vehicle can be confiscated by the trial court on conclusion of the trial when the accused is convicted or acquitted or discharged. The Court must give opportunity of hearing to the person who may claim any right to the seized vehicle before confiscation of the seized vehicle. However, the seized vehicle is not liable to be confiscated if the owner of the seized vehicle can prove that the vehicle was used by the accused person without his knowledge or connivance and that he had taken all reasonable precautions against such use of the seized vehicle by the accused person. The above provisions can be invoked by the trial court at the time of passing the order whether seized vehicle is liable to confiscation on conclusion of trial and after conducting an inquiry to ascertain whether seized vehicle is to be returned to the registered owner or the same is liable to confiscation to the State. There is no specific bar under the provisions of the NDPS Act for return of any seized vehicle used for transporting narcotic drug or psychotropic substance as an interim custody pending final disposal of the Criminal Case. In the absence of any specific bar under the NDPS Act the court can invoke the general provisions of Section 451 of Section 457 of the Code of Criminal Procedure for return of the seized article or vehicle pending final decision of the criminal case. The only obligation on the part of the court returning the seized vehicle to the registered owner is that the registered owner of the vehicle must produce the same before the court on conclusion of trial, so that the court can

⁵ 2006 (2) CHN 198

⁶ 2015 SCC OnLine Cal 1612

decide whether the said vehicle is liable to be confiscated or returned to the rightful claimant.”

13. In *Sainaba (supra)*, the Hon’ble Supreme Court while dealing with the matter of release of a car involved in a case under the NDPS Act allowed for release of the vehicle on the terms and conditions to be determined by the Special Court.

14. It is also relevant to refer to a celebrated judgment of *Sunderbhai Ambalal Desai (supra)* which is a leading case on the subject and still holds the field, where the Hon’ble Supreme Court has explained the extent and scope of jurisdiction under Section 451 Code and how it should be exercised. In *Sunderbhai Ambalal Desai (supra)*, the Supreme Court has directed the criminal Court to exercise the power under Section 451 of the Code for return of the seized articles on some conditions pending final decision of the criminal case. With regard to the return of the seized vehicle during pendency of the criminal case the Supreme Court has observed as follows in paragraph 17 of the said judgment:

“17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.”

15. In view of the above, this Court finds substance in the submissions of Mr. Jana, learned advocate for the petitioner relying on *Sainaba (supra)*, *Syed Basheer (supra)*, *Bhola Singh (supra)* and *Sunderbhai Ambalal Desai (supra)* for return of the seized vehicle in question. It is made clear that nothing has been pressed into service for return of the cash seized in connection with the case. The submission of the State that there is

possibility of the said vehicle seized in connection with case of being used for illegal purpose, if released, falls short of merit in view of the law discussed hereinabove.

16. Thus, the revisional application being **CRR No. 113 of 2024** is hereby allowed. The Order No. 32 dated 19th February, 2024 passed by the Additional Sessions Judge, Special NDPS 1st Court, Jalpaiguri in NDPS Case No. 66 of 2022 (arising out of New Jalpaiguri Police Station Case No. 538 of 2022 dated 23rd May, 2022) under Sections 21(C), 22(C), 25, 28 and 29 of the NDPS Act rejecting the prayer of the petitioner for return and/or release of the seized vehicle in connection with the case is hereby set aside.

17. Accordingly, the vehicle bearing registration no. WB 25E 8677 seized in connection with the case be returned to its registered owner subject to following conditions:

- (i) The petitioner shall furnish bank guarantee of Rs. 50,000/- before the learned Trial Court.
- (ii) The petitioner shall produce the seized vehicle before the learned Trial Court as and when called for during the trial and also during the confiscation proceeding, if any such proceeding is initiated.
- (iii) The petitioner shall not alienate the seized vehicle or change the nature and character of the said vehicle during the pendency of the case.
- (iv) The petitioner shall also give an undertaking that he will not use the vehicle for any illegal activities in future.

- (v) The petitioner shall participate in the confiscation proceedings, if any initiated, and shall produce the vehicle before the confiscation authority.
- (vi) This order for release of the vehicle is subject to the confiscation proceedings.
- (vii) The petitioner shall provide the particulars pertaining to the movement of the said vehicle to the investigating officer or the concerned police station.

18. There shall be no order as to costs.

19. All connected applications, if any, stand disposed of.

20. Interim order, if any, stands vacated.

21. Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)